



TESTIMONY OF  
DAVID JOHN MASUD  
BEFORE THE  
STATE OF MICHIGAN  
HOUSE COMMERCE COMMITTEE  
IN SUPPORT OF  
HOUSE BILL NO. 4287

Good morning, and thank you for allowing me the opportunity to present testimony in support of House Bill No. 4287, proposed legislation that would prohibit the use of Project Labor Agreements (PLAs) on publicly funded construction projects. My name is David Masud.<sup>1</sup> I am managing partner of Masud Labor Law Group,<sup>2</sup> a Saginaw based labor and employment law firm. We have the honor and pleasure of representing, for over 20 years, the Saginaw Valley Chapter of the Associated Builders and Contractors, a group of merit shop employers consisting of over 200 general contractors, subcontractors, and suppliers to the construction industry. My law firm has been actively involved in opposing anti-competitive practices in the construction industry.<sup>3</sup>

I have been asked to limit my comments in support of House Bill No. 4287 to approximately 15 minutes. This is a very short period of time to accomplish this important task so please allow me to get directly to the point.

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<sup>1</sup> David Masud earned his Master of the Laws degree in Labor Law at Georgetown University Law Center in 1985, following graduation from Thomas M. Cooley Law School in 1984, where his legal studies focused on labor and employment law. David also holds a Public Administration undergraduate degree from Ferris State University.

David is the managing partner of Masud Labor Law Group, which he founded in 1986. The law firm specializes in representing management in the area of labor and employment law.

David's background contains over 30 years of labor relations experience, providing knowledgeable insight into employee relations and problem resolution. He has extensive experience as chief negotiator in the collective bargaining of labor contracts, employing traditional, collaborative, win/win and mutual gains methods of negotiating. He also has experience in numerous mediation sessions, union organizing drives, arbitration hearings, and labor board hearings.

<sup>2</sup> The Masud Labor Law Group is the only mid-Michigan law firm – and the only firm in Michigan outside of the major metropolitan areas – dedicated exclusively to serving employers in matters of labor and employment law. Martindale-Hubbell, an independent law firm rating organization, has given Masud Labor Law Group its highest ranking of AV Preeminent, with a 5.0 out of 5.0 rating.

<sup>3</sup> *Associated Builders & Contrs. v. Mich. Dep't of Labor & Econ. Growth*, 543 F.3d 275 (2008); *Associated Builders & Contrs. v. Wilbur*, 472 Mich 117 (2005); *Associated Builders & Contrs. v. Dir, Dep't of Consumer & Indus. Servs.*, 267 Mich App 386 (2005); *City of Lansing v. Carl Schlegel, Inc.*, 257 Mich App 627 (2003); *G.P. Graham Construction Co. v. Chesaning Union Schools*, 2002 Mich App LEXIS 695 No. 226066; *Associated Builders & Contrs., Saginaw Valley Area Chapter v. Perry*, 115 F.3d 386 (1997); *Associated Builders & Contrs. v. Perry*, 16 F.3d 688 (1994); *Associated Builders & Contrs. v. Perry*, 869 F. Supp 1239 (1994).

Project Labor Agreements are an extreme example of union protectionist policy designed for the sole purpose of assisting unions at the expense of the public. Open shop contractors are essentially excluded from public construction projects subject to PLAs. This anti-competitive scheme has no legitimate place in Michigan's public sector. I support this proposition with over 25 years of personal hands on experience advising construction employers concerning the pitfalls of bidding and working on construction projects subject to a PLA. My views in support of House Bill No. 4287 are based on a litany of reasons, but let me address four prominent factors.

***First***, merit shop contractors who make up over 80% of the U.S. Construction industry are, in practical reality, precluded from working on construction projects subject to a PLA. The claim that merit shop contractors have equal opportunity to bid construction projects subject to PLAs on the same basis as unionized contractors is intellectually disingenuous and ignores the practical reality of the real construction world. One need only compare two school district construction projects, one subject to a PLA and one not. I guarantee you that the school district without the PLA will have twice as many bidders, both union and non-union, whereas the school district with the PLA construction project will have virtually no merit shop contractors bidding the project. In fact, I will go so far as to defy anyone to point out any public works construction project subject to a PLA where the number of union and non-union contractors bidding are representative of the whole construction community.

PLAs, by definition, require the successful contractor to sign the controlling construction trade collective bargaining agreement regardless of whether the contractor is union or non-union. While there are several reasons why a merit shop contractor will not sign a union collective bargaining agreement, the most predominant reason is that a merit shop contractor finds it abhorrent to compel his or her employees into forced unionization, along with requiring them to

pay initiation fees and union dues to organizations often having interests contrary to their own, without the benefit of a democratic vote or even a card check. Construction collective bargaining agreements typically mandate that as a condition of working on the construction project employees must join the union and thereafter remain a member in good standing as a condition of continued employment. Alternatively, these contracts mandate that a merit shop contractor disregard his or her work force and instead hire union construction workers from the union hall. Thus, a merit shop contractor is faced with two equally unattractive (impossible) alternatives – either disregard his or her employees’ legal right not to join a union<sup>4</sup> and force them into compelled unionization, or completely ignore his or her long-term, loyal, and skilled workforce in favor of hiring workers completely unknown from a union controlled hiring hall. Compounding the forced unionization dilemma is the fact that if there are any disputes concerning the interpretation of the PLA or the collective bargaining agreement, the issue is removed from the merit shop contractor’s hands and placed instead in the hands of a so-called “neutral arbitration panel” made up of union business agents and unionized competitors. My experience strongly suggests that while “justice” may be swift, it is certainly not unbiased or fair.

In addition to forced unionization and union controlled arbitration panels, other collective bargaining agreement provisions that cause merit shop contractors to forego PLA projects include the requirement that employees work under the complex maze of union defined craft jurisdiction and classification rules, refusal to permit merit shop apprentices to work, mandated participation in unfunded pension plans, and forced payment into union benefit trust funds without employees ever receiving any benefits.

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<sup>4</sup> Section 7, rights of employees, of the National Labor Relations Act, 29 U.S.C. §151, *et. seq.*, states in pertinent part: “Employees shall have the right to self-organization, to form, join, or assist labor organizations . . . ***and shall also have the right to refrain from any or all such activities.*** . . .”

**Second**, PLAs are contrary to any notion of protecting the public through competitive bidding and lowest qualified bidding standards. It has long been the public policy of the State of Michigan to invite competition, guard against favoritism and providence, extravagance, fraud, and corruption in the awarding of public works contracts, and to secure the best work at the lowest price practical. Indeed, early on our Michigan Supreme Court recognized the inconsistent clash between union only agreements and competitive bidding statutes. According to the Michigan Supreme Court in its 1905 decision in *Lewis v. Board of Education of City of Detroit*, 139 Mich 306 (1905):

The [union only] contract tends to create a monopoly and restrict competition and bidding for work. The Board of Education may stipulate for the quality of material to be furnished and the degree of skill required in workmanship, but a provision that the work shall only be done by certain persons or classes of persons, members of certain societies, necessarily creates a monopoly in their favor. The effect of this favoritism is to limit competition by preventing contractors from employing any except certain persons, and by excluding therefrom all other persons in the same work. Such a restriction is illegal and void. No question concerning the merits of labor or trade unions is in any way involved in this case. The right of organization for mutual benefit in all lawful ways is not denied. The question is whether a Board of Education has the right to enter into a combination with such an organization for the expenditure of taxpayers' money for the benefit of members of the organization, and to exclude any portion of the citizens following lawful trades and occupations from the right to labor. It has no such right. *Lewis*, 139 at 138.

**Third**, public works projects financed by tax dollars should be awarded without regard to membership or non-membership in any organization. While unions may trumpet their safety practices, merit shop contractors feel just as proud of their safety, quality, and ability to perform on time and within budget.<sup>5</sup> Setting aside the “safer and

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<sup>5</sup> Unions claim projects built with a non-union workforce are unsafe and/or union workers are safer than non-union workers. There is no statistical evidence to support this claim. Today's construction worksites are governed by numerous laws, Michigan Occupational Safety and Health Act (MIOSHA), MCL 408.101, *et. seq.*, regulations, and safety procedures designed to protect the safety and health of craftspeople. Jobsite safety is not determined by the labor affiliation of a project's workforce, as the majority of reputable and competitive construction companies employ craftspeople that have completed safety training. Contractor qualification and selection, workforce management, and safety programs are more appropriate indicators of a project's quality and safety performance.

better than thou” argument for a moment, should a state law judge an individual contractor’s qualifications and attributes based merely on its membership or lack thereof in a group whose philosophy may be different from another group? Should not each contractor, regardless of class membership, union or non-union, be judged on its merits? I somehow thought it was at best politically incorrect, and at worse prejudicial and myopically narrow-minded to judge people on anything other than their qualifications. Does anyone seriously believe that a union contractor with an outstanding safety and quality record is suddenly transformed into an unsafe and quality poor contractor merely because his employees decertify the union? Does a merit shop contractor instantaneously become better and more safety conscious simply by signing a union contract for a single project covered by a PLA? Such notions are absurd. Equally absurd, is the propaganda that the legitimate concerns of safety, quality, and on time budget are better protected with a PLA. Once again, I defy anyone to point out anything in a PLA or collective bargaining agreement that even remotely speaks to the protection of the public over these legitimate concerns. Public officials currently protect these very important legitimate interests on PLA and non-PLA public construction projects through pre-qualification and bidding documents without making the class distinctions suggested by the opponents to House Bill No. 4287.

So, why are PLAs used in the public sector? This brings me to my *fourth* and final point. Public sector PLAs are always politically motivated and very rarely issued by policy-makers with any regard for what is best for the public they serve. To demonstrate the political cronyism that goes on in the public sector, one only needs to review the public record concerning the flip-flop of project labor agreement Executive Orders during

the Bush I, Clinton, Bush II, and Obama presidencies. In the scores of public sector PLAs that I have investigated, not once was there a discussion about what was good for the public. I have yet to see a public construction PLA that hasn't been spawned by anything other than a combination of politically motivated public officials and strong unions.

In conclusion, PLAs in Michigan's public sector should be outlawed as the special interest legislation that they are and as being wholly inconsistent with employee rights and Michigan's competitive bidding policies. I am confident that the very legitimate issues of public work safety, and most qualified and responsible bidder will continue to be successfully addressed by government in a manner which evaluates individuals based on their qualifications in lieu of preconceived, stereo typical notions regarding class membership.

For these reasons and all the others that I am sure have already been presented to the House Commerce Committee, I urge you to level the playing field for public construction by eliminating project labor agreements by supporting House Bill No. 4287.

Thank you for your time and consideration. I welcome the opportunity to answer your questions.